IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.53 OF 2006
WITH
CIVIL APPLICATION NO.64 OF 2006

Mrs.Zubeida Mulla & Ors. ..Appellants.

V/s.

Mr.Nabeel Hassan Bawa & Anr. ..Respondents.

Mr.P.P.Surve for appellants.

Mr.R.R.Varma h/f Mr.A.M.Saraogi for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 21, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.Varma waives notice for both the Respondents.

4. As short question is involved, appeal is taken up for final hearing forthwith by consent.

5. This appeal from order takes exception to the order passed by the Trial court on 7th December, 2005 on Notice of Motion taken out by the appellant for

interim injunction during the pendency of the suit. The order as passed which is impugned in this appeal would indicate the approach adopted by the trial court which reads thus:

R O Z N A M A

Dated:7th December, 2005.

CORAM: HER HONOUR JUDGE
DR.LAXMI P.RAO

Advocate P.P.Surve for the Plaintiff is present.

Advocate Rajesh Thakur for the Defendant is present.

Notice of Motion to be tagged along with the suit.

Defendant waive service of the suit.

Adjourned for filing w/s Suit is expdt. For hearing.

Adjourned for W/S and issues on 10th January, 2006.

Suffice it to observe that the Trial Judge at best could have considerd the prayer for ad-interim relief and refused the same. But by no standards, without expressing opinion on the ad-interim relief or for that matter the interim relief claimed in the notice of motion, the trial court could not have directed hearing of the notice of motion alongwith the suit. The purpose of taking out notice of motion is to seek

interim relief during the pendency of the suit. Such proceedings cannot be tagged alongwith the suit making the appellant/plaintiff remediless till the suit is finally decided. Suffice it to observe that the approach of the trial Judge to say least cannot be countenanced. This is not the correct judicial approach in considering prayer for ad-interim relief or dealing with the Notice of Motion, the purpose of which is to seek interim relief during the pendency of the suit.

6. Accordingly, the impugned order is set aside to the extent it observes that the Notice of Motion to be tagged along with the suit. Instead the trail Judge is directed to forthwith dispose of the said notice of motion on its own merits in accordance with the law by giving both the parties fair opportunity to contest the issues raised therein. The Notice of Motion be finally disposed of by end of June, 2006.

7. In the mean time, if any ad-interim order is required by any party, it will be open to the trial court to consider such prayer and pass necessary order in that behalf, as may be advised.

8. Appeal as well as civil application disposed

of accordingly. No order as to costs.

9. Copy of this order be marked to the Registrar General for being placed before the learned Chief Justice for appropriate direction.